UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALFREDO SATO-AVITIA,   )
        Petitioner,   )
)   C.A. No. 04-40171-JLT
     v.   )
)
DAVID L. WINN, Warden,   )
        Respondent.   )

MEMORANDUM AND ORDER OF DISMISSAL

For the reasons stated below, the petition for a writ of habeas corpus under 28 U.S.C. § 2241 is dismissed.

FACTS

On August 25, 2004, petitioner Alfredo Sato-Avitia, an inmate at FMC Devens, filed a petition for a writ of habeas corpus under Section 2241, along with an application to proceed without prepayment of the filing fee. The application to proceed without prepayment of the filing fee will be granted in a separate order.

As far as can be discerned from the vague allegations in the petition, it appears that petitioner intends to challenge a sentence imposed on him by the United States District Court for the Western District of Texas. Specifically, petitioner states that the first basis for the instant petition is "Each Ground Prior Presented To The Federal Courts Relating To Petitioners Criminal Case." Petition p. 2. The petition provides little further information regarding the basis for petitioner's claims. It vaguely refers to "the complete

federal court and other records," presumably a reference to

his criminal trial and/or to two prior § 2241 petitions

previously filed by petitioner and dismissed by this Court.[1]

Petitioner sets forth no further specific information

regarding the legal basis for the instant petition.

<u>ANALYSIS</u>

I.   The Court May Screen This Action Pursuant to the Rules
      <u>Governing Habeas Proceedings</u>

Although petitioner brings this petition under Section

2241, the rules governing Section 2254 cases may be applied at

the discretion of the district court to other habeas

petitions. <u>See</u> Rule 1(b) of the Rules Governing Section 2254

proceedings; <u>Perez v. Hemingway</u>, 157 F. Supp. 2d 790, 795

(E.D. Mich. 2001). Under Rule 4(b) of the Rules Governing

Section 2254 Proceedings, the Court is required to examine a

petition, and if it "plainly appears from the face of the

motion. . . that the movant is not entitled to relief in the

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[1] Petitioner filed a previous § 2241 petition in this Court, C.A. No. 04-40062-WGY, challenging the same conviction and the sentence imposed therefor.   In that petition, petitioner claimed, among other things, that: (1) the sentencing court lacked jurisdiction to impose the sentence; (2) that he received a lengthier sentence in exchange for his guilty plea than was proper; and (3) there were general improprieties in other aspects of the manner in which he was convicted and sentenced. That action was dismissed on June 3, 2004 (Docket No. 5). Petitioner has appealed from that order.
    The Court's records also reflect that a copy of petitioner's original § 2241 petition was inadvertently opened as a new action, C.A. No. 04-40076-WGY. That action was dismissed on June 6, 2004. Petitioner has also appealed from that order.

district court," the Court "shall make an order for its

summary dismissal." Rule 4(b); McFarland v. Scott, 512 U.S.

849, 856 (1994) (habeas petition may be dismissed if it

appears to be legally insufficient on its face). A petition

for a writ of habeas corpus may also be summarily dismissed if

it fails to set forth facts that give rise to a cause of

action under federal law. 28 U.S.C. § 2243; Marmol v. Dubois,

885 F. Supp. 444, 446 (D. Mass. 1994).

II. A Section 2241 Petition May Not Be Used To Challenge A
     Sentence

     To the extent that petitioner seeks to challenge the

sentence imposed by the United States District Court for the

Western District of Texas, a petition pursuant to § 2241 is

not the proper avenue for challenging a federal sentence.

Rather, a motion pursuant to 28 U.S.C. § 2255 provides the

primary means of collateral attack on a federal sentence. See

United States v. DiRusso, 535 F.2d 673, 674-676 (1st Cir. 1976)

(§ 2255 grants jurisdiction over post-conviction claims

attacking the "imposition or illegality of the sentence"). A

motion pursuant to § 2255 encompasses claims (1) that the

sentence was imposed in violation of the Constitution or laws

of the United States; (2) that the court was without

jurisdiction to impose such sentence; (3) that the sentence

was in excess of the maximum authorized by law; or (4) that

the sentence is otherwise subject to collateral attack. 28

U.S.C. § 2255; see Rogers v. United States, 180 F.3d 349, 357

n. 15 (1st Cir. 1999), cert. denied, 528 U.S. 1126 (2000)

(citations omitted) (motion under § 2255 is the "exclusive

remedy in the sentencing court for any errors occurring at or

prior to sentencing, including construction of the sentence

itself.").

In contrast, a petition filed pursuant to Section 2241

generally challenges the execution of a federal prisoner's

sentence, including such matters as the administration of

parole, computation of a prisoner's sentence by prison

officials, prison disciplinary actions, prison transfers,

types of detention and prison conditions. See United States

v. Barrett, 178 F.3d 34, 50 n. 10 (petitions pursuant to §

2241 generally attack the execution of a sentence); accord

Thompson v. United States, 536 F.2d 459, 460 (1st Cir. 1976)

(same); cf. Gonzalez v. United States, 150 F. Supp. 2d 236,

242 (D. Mass. 2001) (§ 2241 petition is not the "appropriate

vehicle" to challenge a sentence).

In this case, petitioner does not appear to challenge the

manner, location, or conditions of his sentence. Even

generously construed, at best it appears that he is attempting

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to challenge some unspecified aspect of the imposition of his

sentence, which is generally within the domain of a motion

brought under Section 2255. If petitioner's claims are viable

at all, his avenue of relief is only through Section 2255.

Gonzalez v. United States, 150 F. Supp. 2d at 242.

Accordingly, the petition is not appropriately brought under

Section 2241, and it is therefore subject to dismissal.

<div align="center">CONCLUSION</div>

Based upon the foregoing, the petition for a writ of

habeas corpus under Section 2241 is dismissed.

SO ORDERED.

Dated at Boston, Massachusetts, this 17th day of September, 2004.

                              s/ Joseph L. Tauro
                              JOSEPH L. TAURO
                              UNITED STATES DISTRICT JUDGE